

## **Assembly Bill No. 1415**

### **CHAPTER 578**

An act to amend Section 25214.8.1 of, to amend the heading of Article 10.2.1 (commencing with Section 25214.8.1) of Chapter 6.5 of Division 20 of, and to add Sections 25214.8.3, 25214.8.4, 25214.8.5, and 25214.8.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 6, 2005. Filed with  
Secretary of State October 6, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1415, Pavley. Hazardous waste: mercury relays and switches.

(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.

This bill would prohibit a person from selling, offering to sell, or distributing for promotional purposes in this state, on or after July 1, 2006, certain new or refurbished mercury-added products, unless the use of the product is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

The bill would also prohibit a person from selling, offering to sell, or distributing for promotional purposes in this state, on or after July 1, 2006, a mercury switch or mercury relay, as defined. The bill would exclude from this prohibition a switch or relay, as specified, that was in use prior to July 1, 2006, and a mercury switch or mercury relay if use of the switch or relay is required under federal law or federal contract specification, or a mercury switch or mercury relay meeting specified conditions.

This bill would require the Department of Toxic Substances Control to grant an exemption from the prohibition for a product that contains a mercury switch or a mercury relay if specified conditions are met.

The bill would also prohibit a person from selling, offering to sell, distributing for promotional purposes in this state, on or after January 1, 2008, a mercury diostat, as defined, or a new or refurbished oven or gas range containing a mercury diostat.

(2) Since a violation of the requirements imposed by the bill would be a crime, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Article 10.2.1 (commencing with Section 25214.8.1) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended to read:

Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and  
Measuring Devices

SEC. 2. Section 25214.8.1 of the Health and Safety Code is amended to read:

25214.8.1. (a) The Legislature finds and declares all of the following:

(1) Once mercury is released into the environment it can change to methyl mercury, a highly toxic compound. Methyl mercury is easily taken up in living tissue and bioaccumulates over time, causing serious health effects, including neurological and reproductive disorders in humans and wildlife. Since mercury does not break down in the environment, it has become a significant health threat to humans and wildlife.

(2) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(3) Increasingly stringent mercury discharge limits for wastewater treatment plants make the identification and elimination of unnecessary sources of mercury a critical task, because the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of mercury-containing products, as currently formulated.

(4) Thermostats and other switches and relays are among the largest remaining sources of mercury in consumer products that can be legally sold in California.

(5) Most thermostats contain 3,000 milligrams of mercury and have a 35-year lifespan.

(6) Many other mercury-containing switches hold up to 4 grams of mercury, and mercury-containing relays hold as much as 153 grams.

(7) Esophageal dilators contain as much as two pounds of mercury.

(8) Mercury thermostats, switches, relays, measuring devices, esophageal dilators, and gastrointestinal tubes are hazardous waste when discarded, and on and after January 1, 2006, all mercury thermostat, switch, relay, measuring device, esophageal dilator, and gastrointestinal tube wastes will be prohibited from disposal in a solid waste landfill under the regulations adopted pursuant to this chapter.

(9) Economical alternatives to mercury thermostats, relays, switches, measuring devices, esophageal dilators, and gastrointestinal tubes are available for commercial and, when applicable, residential applications.

(b) For purposes of this article the following definitions shall apply:

(1) “Mercury-added product” means any product or device that contains mercury.

(2) “Mercury-added thermostat” means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. A mercury-added thermostat includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(3) “Mercury relay” means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. “Mercury relay” includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(4) “Mercury switch” means a mercury-added product or device that opens or closes an electrical circuit or gas valve.

(A) A mercury switch includes, but is not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.

(B) A mercury switch does not include a mercury-added thermostat or a mercury diostat.

(C) “Mercury diostat” means a mercury switch that controls a gas valve in an oven or oven portion of a gas range.

SEC. 3. Section 25214.8.3 is added to the Health and Safety Code, to read:

25214.8.3. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, any of the following new or refurbished mercury-added products:

- (1) A barometer.
- (2) An esophageal dilator, bougie tube, or gastrointestinal tube.
- (3) A flow meter.
- (4) A hydrometer.
- (5) A hydrometer or psychrometer.
- (6) A manometer.
- (7) A pyrometer.
- (8) A sphygmomanometer.
- (9) A thermometer.

(b) Subdivision (a) does not apply to the sale of a mercury-added product if the use of the product is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

SEC. 4. Section 25214.8.4 is added to the Health and Safety Code, to read:

25214.8.4. (a) Except as provided in subdivisions (b) to (e), inclusive, and Section 25214.8.5, on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a new or refurbished mercury switch or mercury relay individually or as a product component.

(b) Subdivision (a) does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2006, and one of the following applies:

(1) The larger product is used in manufacturing.

(2) The switch or relay is integrated in and not physically separate from other components of the larger product.

(c) Subdivision (a) does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is required under federal law or federal contract specification.

(d) Subdivision (a) does not apply to a mercury switch or a mercury relay that contains less than 1 milligram of mercury, if the manufacturer of the mercury switch or relay has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be resubmitted to the department every three years. The initial and subsequent notifications shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the mercury switch or mercury relay to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is hermetically sealed by the manufacturer.

(B) The mercury switch or relay is intended for industrial use in test and measurement instruments or in systems for monitoring and control applications.

(C) There is no substantially equivalent nonmercury alternative technology for the intended use of the switch or relay, considering all aspects of electrical performance, size, power consumption, product life, and cost.

(D) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of exempted mercury switches or relays sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the mercury switch or relay, and the products that contain the mercury switches or relays, are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, once the switch or relay or the product becomes a waste.

(E) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when either of the following occurs:

(i) The manufacturer fails to submit a new exemption notification, meeting the requirements of this subdivision, within three years following submission of the prior exemption notification.

(ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no longer satisfied.

(e) Subdivision (a) does not apply to the resale of a refurbished imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay if the manufacturer of the imaging and therapy system has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the imaging and therapy system to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is integrated in, and not physically separate from, other components of the larger product.

(B) The larger product was initially manufactured prior to July 1, 2006.

(C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of mercury switches or relays contained in exempted imaging and therapy systems sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the products that contain the mercury switches or relays are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, and the products that contain the mercury switches or relays, once the switch or relay or the product becomes a waste.

(D) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer satisfied.

SEC. 5. Section 25214.8.5 is added to the Health and Safety Code, to read:

25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group representing the manufacture, has obtained an exemption, pursuant to the process described in subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or only to limited uses of the product. An exemption granted under subdivision (b) also applies to the sale to the

product manufacturer of the mercury switch or relay to be contained in the product covered by the exemption.

(b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4 for a period of three years only if all of the following conditions are met:

(1) The manufacturer of the product, or a trade group representing the manufacturer, submits a request for an initial or renewed exemption to the department that specifies the use or uses of the product for which an exemption is requested along with supporting information that complies with the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request only for a product and use for which there is no technical feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use.

(2) The supporting information submitted by the manufacturer or trade group demonstrates that the product is eligible for the exemption.

(3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement agreement with the department, pursuant to subdivision (d), and complies with the terms of that agreement.

(c) The supporting information that a manufacturer or trade group submits to the department, before the department may grant an exemption pursuant to subdivision (b), shall include all of the following:

(1) The name of the manufacturer, or the trade group and the manufacturers represented by the trade group, requesting the exemption and the name, position, and contact information for the person who is the manufacturer's or trade group's contact person on all matters concerning the exemption.

(2) An identification and description of the product, and the use or uses of the product, for which the exemption is requested.

(3) An identification and description of the mercury switch or mercury relay, including identification of the manufacturer of the switch or relay, and an explanation of the need for, and functioning of, the mercury switch or mercury relay in the product.

(4) For each use for which an exemption is requested, information that fully and clearly demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use. This shall include, but is not limited to, a description of past, current, and planned future efforts to seek or develop those alternatives, and a description of all alternatives that have been considered and an explanation of the technical or economic reasons as to why each alternative is not satisfactory.

(5) Information that fully and clearly demonstrates that the switch or relay or the product is constructed so as to prevent the release of mercury to the environment.

(6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and management of the product at the end of its useful life, including removal and proper management of the mercury

switch or mercury relay contained in the product, and information fully and clearly demonstrating that the manufacturer, individually, or in conjunction with an industry or trade group, is committed to and capable of implementing the plan. The plan shall include an education and outreach component to ensure that users of the product are aware of available collection opportunities and legal requirements for management of the product once it becomes a waste. An exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer, individually, or in conjunction with an industry or trade group, has not implemented the plan submitted in support of the exemption request within six months of the effective date of the exemption.

(7) A copy of all similar exemption requests, including supporting documentation, submitted by the applicant to another state, and a copy of that state's response to the exemption request.

(d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant to subdivision (b) shall enter into a written agreement with the department pursuant to the procedures set forth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all costs incurred by the department in processing and responding to the request.

(e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a manufacturer or trade group, shall be treated as confidential as required by department procedures established pursuant to Section 25173. Any information that is not a trade secret, as defined in Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made available to the public upon request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no later than 180 calendar days after receiving the exemption request and all information determined by the department to be necessary to determine if all of the conditions specified in subdivision (b) are met.

(2) An exemption shall not be deemed to be granted if the department fails to grant or deny the exemption request within the time limit specified in paragraph (1).

(3) Nothing in this subdivision shall preclude the applicant and the department from mutually agreeing to an extension of the time limit specified in paragraph (1).

SEC. 6. Section 25214.8.6 is added to the Health and Safety Code, to read:

25214.8.6. On or after January 1, 2008, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a mercury diostat or a new or refurbished oven or gas range containing a mercury diostat.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred

because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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